

Maine Water Quality Standards: Analysis of Key Arguments and Implications

July 2017

Purpose

Familiarize OW leadership with details of EPA and Maine's position on each key issue in the litigation in order to position leadership to make informed decisions on options.

Background

- In 2015 and 2016, EPA approved and disapproved a number of Maine water quality standards (WQS). The disapprovals were based on EPA's conclusions that the WQS did not meet Clean Water Act (CWA) requirements. Maine sued EPA over a subset of EPA's actions -- specifically, for waters in Indian lands, the approvals of the designated use of sustenance fishing and the disapprovals of human health criteria that did not protect that designated use -- and the litigation is pending. EPA subsequently finalized a federal promulgation to remedy the disapprovals when Maine did not do so.
- In February 2017, EPA received two petitions, one from the Maine Governor and the other from three dischargers in Maine, to reconsider the sustenance fishing designated use approvals, all disapprovals, and the federal promulgation. On May 18, 2017, the Penobscot Nation sent EPA a letter opposing the petitions for reconsideration.
- The court recently granted a 90-day stay of the litigation to allow EPA time to familiarize decision-makers with the rule, litigation, and petitions, and determine whether to reconsider its actions in light of the petitions.
- The court ordered the parties to file a status report by August 10. In the report, EPA should indicate whether it has decided to reconsider its decisions and if so, may identify the period of time after which the Agency will inform the court of the outcome of its reconsideration.
- This paper describes the basis for EPA's decisions on several key issues in the litigation, Maine's position, and EPA's response. Additional issues addressed in the litigation and petitions are briefly mentioned at the end.

History

- There are four federally recognized Indian tribes in Maine. We refer to the Penobscot and Passamaquoddy as the "Southern Tribes," and the Houlton Band of Maliseet Indians and Aroostook Band of Micmacs as the "Northern Tribes."
- Waters in Indian lands (*i.e.*, waters in the tribes' reservations and trust lands) are a small fraction of all the waters in Maine. (See appendix B for map.)
- In 1979 Maine enacted the Maine Implementing Act (MIA) (See appendix C), which embodied an agreement reached between the state and two of the four tribes (the Penobscot Nation and the Passamaquoddy Tribe). Congress later ratified MIA in the federal Maine Indian Claims Settlement Act (MICSA).
- Pursuant to subsequent amendments to MIA and MICSA as well as additional state and federal legislation (all referred to collectively as the "settlement acts"), the state and all four tribes have entered into agreements codified in state law and ratified by Congress in federal statutes that

address numerous issues governing the relationship between the parties and, among other things, their uses and regulation of various natural resources.

Analysis

Topic 1:

Ex.5 ACP / AWP / DPP

Ex.5 ACP / AWP / DPP

EPA's Position

Maine's Position

Ex.5 ACP / AWP / DPP

Topic 2:

Ex.5 ACP / AWP / DPP

Ex.5 ACP / AWP / DPP

EPA's Position

Maine's Position

Ex.5 ACP / AWP / DPP

Ex.5 ACP / AWP / DPP

Topic 3:

Ex.5 ACP / AWP / DPP

EPA's Position

Maine's Position

Ex.5 ACP / AWP / DPP

Ex.5 ACP / AWP / DPP

Topic 4: Ex.5 ACP / AWP / DPP

EPA's Position

Maine's Position

Ex.5 ACP / AWP / DPP

Topic 5:

Ex.5 ACP / AWP / DPP

EPA's Position

Maine's Position

Ex.5 ACP / AWP / DPP

EPA's Position	Maine's Position
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Additional Issues

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Appendix A
Outline of Options

Ex.5 ACP / AWP / DPP